



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF G-H-P-, INC.

DATE: DEC. 7, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a non-profit health care organization, seeks to permanently employ the Beneficiary as a senior business systems analyst under the immigrant classification of member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) § 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). The Director, Nebraska Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director concluded that the record did not establish the Beneficiary's qualifying experience for the offered position.¹ Accordingly, the Director denied the petition on April 3, 2015.

The record shows that the appeal is properly filed and alleges specific errors of fact or law. The record documents the case's procedural history, which is incorporated into the decision. We will elaborate on the procedural history only as necessary.

We conduct appellate review on a *de novo* basis. *See, e.g., Soltane v. Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence of record, including new evidence properly submitted on appeal.²

A petitioner must establish a beneficiary's possession of all the education, training, and experience specified on an accompanying labor certification by a petition's priority date. 8 C.F.R. §§ 103.2(b)(1), (12); *see also Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

¹ The record indicates that an employee of the Petitioner, without its knowledge or authorization, submitted an incomplete response to the Director's request for evidence (RFE) of March 13, 2015. However, the Director properly denied the petition based on the record after the response. *See* 8 C.F.R. § 103.2(b)(11) (stating that "[s]ubmission of only some of the requested evidence will be considered a request for a decision on the record"). The Director rejected the Petitioner's request to treat the appeal as a motion to reopen and forwarded the matter to us. *See* 8 C.F.R. § 103.3(a)(2)(iii) (allowing a reviewing official to treat an appeal as a motion to reopen or reconsider, and to take favorable action).

² The instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1), allow the submission of additional evidence on appeal.

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In evaluating a beneficiary's qualifications, we must examine the job offer portion of an accompanying labor certification to determine the minimum requirements of the offered position. We may neither ignore a term of the labor certification, nor impose additional requirements. See *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1009 (9th Cir. 1983); *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1, 3 (1st Cir. 1981).

In the instant case, an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL), accompanies the petition. The petition's priority date is May 21, 2014, the date the DOL accepted the labor certification application for processing. See 8 C.F.R. § 204.5(d).

The accompanying labor certification states the minimum educational requirements of the offered position of senior business systems analyst as a Bachelor's degree or a foreign equivalent degree in computer science, business, health care management, or management information systems (MIS). The position also requires at least 60 months of experience in a related occupation, such as analyst or programmer analyst.

Part H.14 of the ETA Form 9089 further requires qualifying experience to include at least five years of progressive, post-baccalaureate experience in an information technology (IT)-related field. The experience must include "hands-on" experience with: "analytically challenging projects in IT or healthcare analytics" involving analysis and development; "[k]nowledge of relational database technology and client-server applications, data warehouse/data stores, data marts, and data cubes;" "[e]xperience with a wide variety of ETL, reporting and statistical analysis tools: SQL, PL/SQL, Business Objects, Crystal Reports, MS SQL Reporting Server, SAS, SPSS and STATA;" "[k]nowledge of healthcare financial operations and payment methodologies," including "working with complex financial and healthcare data;" and "experience with Epic application reporting."

The Beneficiary attested on the accompanying labor certification to more than 60 months of related post-baccalaureate experience in the United States before joining the Petitioner in the offered position on April 22, 2013. The Beneficiary stated the following experience:

- About 26 months as a full-time programmer-analyst 2 with [REDACTED] from February 21, 2011 to April 19, 2013;
- About 53 months as a full-time programmer analyst with [REDACTED] from September 1, 2008 to February 20, 2011;
- About 14 months as a part-time analyst with [REDACTED] of Michigan from June 1, 2007 to August 10, 2008;³ and

³ For labor certification purposes, part-time experience equals half the amount of full-time experience over the same period. See, e.g., *Matter of Cable Television Labs., Inc.*, 2012-PER-00449, 2014 WL 5478115, *2 (BALCA Oct. 23, 2014) (finding that a foreign national's 16 months of part-time experience equated to eight months of full-time experience).

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- About four months as a full-time programmer with [REDACTED] from January 10, 2007 to May 20, 2007.

A petitioner must support a beneficiary's claimed qualifying experience with letters from employers. 8 C.F.R. § 204.5(g)(1). The letters must provide the names, addresses, and titles of the employers, and descriptions of the beneficiary's experience. *Id.* If a required letter from an employer is unavailable, a petitioner must demonstrate the unavailability of the letter before other evidence of qualifying experience will be considered. 8 C.F.R. § 103.2(b)(2).

I. THE BENEFICIARY'S CLAIMED QUALIFYING EXPERIENCE

AT [REDACTED]

The Petitioner submitted two letters on the stationery of [REDACTED] in support of the Beneficiary's claimed qualifying experience. Both letters state the health system's employment of the Beneficiary as a programmer-analyst 2 from February 21, 2011 to April 19, 2013 and describe his duties.

As noted in the Director's RFE, a February 9, 2015, letter from a senior programmer analyst does not state whether the Beneficiary worked on a full-time or part-time basis for the health system. However, an April 20, 2015, letter from a director of the system's center for health policy and health services research confirms the Beneficiary's full-time employment. The record therefore establishes the Beneficiary's possession of about 26 months of full-time qualifying experience with [REDACTED]

II. THE BENEFICIARY'S CLAIMED QUALIFYING EXPERIENCE

AT [REDACTED]

The Petitioner submitted a February 11, 2015, letter from a research specialist stating the Beneficiary's employment by [REDACTED] as a programmer analyst from September 1, 2008 to February 20, 2011. The letter also describes the Beneficiary's duties.

However, the letter does not comply with 8 C.F.R. § 204.5(g)(1) because it is not "from" the purported employer, [REDACTED]. Rather, the letter is printed on the stationery of the [REDACTED] where the research specialist is currently employed. The letter states the research specialist's prior employment as a research assistant by [REDACTED] from December 2009 to November 2013. However, the letter does not explain how the research specialist knew of the Beneficiary's work at the medical center, or the relationship between the medical center and the university.

On appeal, the Petitioner submits evidence of unsuccessful attempts by the Beneficiary to obtain a letter from [REDACTED]. However, even if the required letter was unavailable, numerous inconsistencies of record cast doubt on the Beneficiary's claimed qualifying experience at the medical school.

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A May 27, 2015, affidavit of the Beneficiary states his employment by the medical school as a research assistant from January 8, 2009 to February 20, 2011, and as a part-time student assistant from September 1, 2008 to December 31, 2008. The Beneficiary's affidavit conflicts with the accompanying labor certification and the letter from the research specialist, which state the Beneficiary's employment by the medical school in a single position from September 1, 2008 to February 20, 2011. The labor certification also states the Beneficiary's employment by the medical school on a full-time basis, while the Beneficiary's affidavit states that he spent a portion of that period working part-time. The record does not explain the discrepancies between the Beneficiary's attestations on the labor certification and in his affidavit. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record by independent, objective evidence).

A May 27, 2015, affidavit of the research specialist establishes his basis of knowledge of the Beneficiary's employment by [REDACTED]. However, the research specialist worked with the Beneficiary from only December 2009 to February 20, 2011. He therefore lacks personal knowledge of the Beneficiary's purported employment by the medical school from September 1, 2008 to December 31, 2008. *See* 8 C.F.R. § 103.2(b)(2)(i) (requiring affiants to have "direct personal knowledge of the event and circumstances").

In addition, USCIS records contain a prior labor certification and a December 1, 2011, letter from the director of the [REDACTED]. These documents state the Beneficiary's employment from September 2008 to February 2011 by the university, not by the medical center. The director's letter also states the Beneficiary's employment as a "full time research assistant working in a web programmer capacity from June 29, 2009 to February 20, 2011," and as a "technician working in a web programmer capacity in the office from September 28, 2008 to June 28, 2009." Thus, the record does not explain whether the Beneficiary worked for the university or the medical center from September 2008 to February 2011, whether all of the work was on a full-time basis, whether he held one position or two, and, if two positions, when he worked in each position. *See Ho*, 19 I&N Dec. at 591-92 (requiring a petitioner to resolve inconsistencies of record by independent, objective evidence).

The Beneficiary also attested on the labor certification to full-time employment by [REDACTED] as a programmer from January 10, 2007 to May 20, 2007. However, a February 23, 2015, letter from an international student advisor on [REDACTED] stationery indicates the Beneficiary's employment during that period by the university, not the medical center.

Also, evidence of record indicates that the Beneficiary's employment from January 10, 2007 to May 20, 2007 was not full-time in nature as stated on the labor certification. The May 27, 2015, affidavits of the Beneficiary and a former university administrative assistant both describe the Beneficiary's employment during that period as "part-time." *See Ho*, 19 I&N Dec. at 591-92 (requiring a petitioner to resolve inconsistencies of record by independent, objective evidence).

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Because of numerous unexplained inconsistencies, the record does not establish the Beneficiary's claimed qualifying experience at [REDACTED]

III. THE BENEFICIARY'S CLAIMED QUALIFYING EXPERIENCE

AT [REDACTED]

The record also contains numerous inconsistencies regarding the Beneficiary's claimed qualifying experience at [REDACTED]

The Beneficiary attested on the accompanying labor certification to his part-time employment by the [REDACTED] from June 1, 2007 to August 10, 2008. However, a February 13, 2015, letter from the Dean of the [REDACTED] states that the Beneficiary "was employed as an Analyst at [REDACTED] but [was] working on a project with [REDACTED] 06/01/07 to 08/10/08." Thus, the labor certification does not appear to state the Beneficiary's actual employer from June 1, 2007 to August 10, 2008 as required.

In a letter dated May 20, 2015, the dean describes the project at the [REDACTED] as a collaboration between [REDACTED]. The dean's prior letter states the Beneficiary's work on the project from June 1, 2007 to August 10, 2008. However, the dean's May 20, 2015, letter states the Beneficiary's work on the project from only January 14, 2008 to April 29, 2008. In a separate May 20, 2015, letter, the dean states the Beneficiary's part-time employment by the university from June 1, 2007 to December 31, 2007. The record does not explain the inconsistencies in the dean's letters.

In an April 20, 2015, letter, the president of [REDACTED] also describes the [REDACTED] project as a collaboration between [REDACTED]. However, a copy of a January 8, 2008, job-offer letter on [REDACTED] stationery indicates the Beneficiary's employment by [REDACTED], not by the [REDACTED] as indicated on the labor certification, nor by the university as indicated by the dean. In his May 27, 2015, affidavit, the Beneficiary states his employment by [REDACTED] from January 14, 2008 to April 29, 2008 and his employment by [REDACTED] from June 1, 2007 to December 31, 2007.

The Petitioner's letter of February 26, 2015 also contradicts the accompanying labor certification. The letter states the Beneficiary's employment at the [REDACTED] as an analyst from June 1, 2007 to August 10, 2008 "in a full-time capacity," rather than part-time as stated on the labor certification. *See Ho*, 19 I&N Dec. at 591-92 (requiring a petitioner to resolve inconsistencies of record by independent, objective evidence).

The record does not explain the inconsistencies in the Beneficiary's purported employers and hours from June 1, 2007 to August 10, 2008. The record therefore does not establish the Beneficiary's claimed qualifying experience during that period.

The record also indicates the Beneficiary's enrollment in graduate programs from 2007 to 2008 and from 2011 to 2012. The record does not explain how the Beneficiary purportedly worked full-time while simultaneously studying during those periods. *Id.*

IV. CONCLUSION

For the foregoing reasons, the record does not establish the Beneficiary's possession of the qualifying experience specified on the accompanying labor certification by the petition's priority date. We will therefore affirm the Director's decision and dismiss the appeal.

The petition will be denied for the reasons discussed above. In visa petition proceedings, a petitioner bears the burden of establishing eligibility for the requested benefit. INA § 291, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of G-H-P-, Inc.*, ID# 14780 (AAO Dec. 7, 2015)